Petition

81-1210

NO. _____

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

LOUIS RAULERSON,

Petitioner,

v.

VAN HOWELL,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, UNIT B, NOW THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

Whether a complaint which alleges a deprivation of property under color of state law by the unauthorized and unanticipatable activities of a state employee but which fails to allege that there are no available state remedies to redress such deprivation has alleged a violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States?

LIST OF PARTIES

In addition to Petitioner Louis Raulerson and Respondent Van Howell, the parties to the proceeding in the Court of Appeals whose judgment is sought to be reviewed include the Department of Natural Resources of the State of Georgia, the Honorable Joe D. Tanner, Commissioner of the Department, Ross Knowlton, Wallace King, J. Leon Raulerson and The Langdale Company, all of whom were co-defendant/appellees with the Petitioner and dismissed by the court below and have no interest in this Petition for Writ of Certiorari.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, UNIT B, NOW THE ELEVENTH CIRCUIT

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, Unit B, now the Eleventh Circuit,[1] is reported as *Howell v. Tanner*, 650 F.2d 610 (5th Cir. 1981). A copy is attached hereto as Appendix A. The Court of Appeals' denial of Petitioner's Suggestion for Rehearing En Banc (without further opinion) is not yet reported and is attached hereto as Appendix B. The opinion of the United States District Court for the Middle District of Georgia was not reported. A copy is attached hereto as Appendix C.

[1] Throughout this petition we shall refer to the decision for which certiorari is applied as one of the Fifth Circuit, though the unit of the Fifth Circuit from which the opinion came is now the United States Court of Appeals for the Eleventh Circuit.

JURISDICTION

Petitioner's Suggestion for Rehearing En Banc respecting the Court of Appeals' decision of July 13, 1981 was denied by the Court of Appeals on September 18, 1981. This Petition for a Writ of Certiorari was filed within 90 days of the denial of the Suggestion for Rehearing En Banc. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment 14, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. § 1983:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

This action was commenced by the Respondent Van Howell (hereinafter "Van Howell") in an attempt to show that the Petitioner Louis Raulerson (hereinafter "Louis Raulerson"), a wildlife technician for the Department of Natural Resources of the State of Georgia (hereinafter "DNR") at the time of the actions complained of by Van Howell, DNR itself, Commissioner of DNR Joe D. Tanner, DNR employees Ross Knowlton and Wallace King, Leon Raulerson, the former Sheriff of Echols County, Georgia, and The Langdale Company, were liable to him under certain provisions of Georgia law and 42 U.S.C. §§ 1983 and 1985(3). Van Howell's federal claims, as recognized by the Court of Appeals,[2] were in essence that he was deprived of property under color of state law in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States as the result of two events: (1) an incident on June 21, 1975 in which he was charged with unlawful possession of a firearm in a game management area; and (2) an incident on January 3, 1976 in which Van Howell alleges he was shot by Louis Raulerson. Although the Court of Appeals affirmed the decision of the district court granting summary judgment to all defendants except Louis Raulerson, the Court of Appeals reversed the district court's granting of Louis Raulerson's motion to dismiss on the grounds that Van Howell's complaint successfully alleged a deprivation of a property interest without due process of law based on the January 3, 1976 shooting incident even though the Court of Appeals recognized that Van Howell may have been able to seek redress

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[2] *Howell v. Tanner*, 650 F.2d 610, 616 (5th Cir. 1981).

for that incident under Georgia tort law. *Howell v. Tanner*, 650 F.2d 610, 616 at n.9 (5th Cir. 1981).

For the purposes of this Petition for a Writ of Certiorari, the only relevant facts are those surrounding the January 3, 1976 shooting incident alleged by Van Howell. That incident occurred when Louis Raulerson observed Van Howell traveling east on Georgia Highway 187 and waved for him to stop. After Van Howell stopped, Louis Raulerson approached Van Howell's vehicle and the two engaged in a discussion which became hostile. Louis Raulerson then began moving back toward his vehicle followed by Van Howell who was engaged in argument and had a gun in his possession which possession was apparent. Subsequently Van Howell was shot in the right side of his body. Van Howell's complaint alleges that during the dispute Louis Raulerson was in his DNR uniform and standing beside a DNR vehicle and that Louis Raulerson threatened Van Howell with death and maliciously inflicted bodily injury upon him.

REASON FOR GRANTING THE WRIT

The Fifth Circuit Court of Appeals held that Van Howell's complaint alleged a violation of the Due Process Clause of the Fourteenth Amendment even though it alleged no more than a deprivation of property via a random and unauthorized action of a State employee for which deprivation Van Howell can obtain redress via Georgia's tort law. That decision squarely conflicts with this Court's decision in *Parratt v. Taylor*, ____ U.S. ____, 101 S.Ct. 1908 (1981).

In *Parratt v. Taylor* this Court ruled that a deprivation of property as a result of a random and unauthorized act by a state employee under color of state law does not rise to the level of a violation of the Fourteenth Amendment's

Due Process Clause if state law provides a means by which redress for the deprivation may be obtained. *Parratt v. Taylor*, ____ U.S. ____, 101 S.Ct. 1908, 1915, 1916 (1981). In *Parratt* a Nebraska inmate alleged that certain hobby materials he had ordered via the mails were lost when Nebraska state prison officials negligently failed to follow the normal procedures for the receipt of packages, and that this failure deprived him of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution and therefore was a proper basis for an action pursuant to 42 U.S.C. § 1983 (hereinafter "§ 1983"). This Court, after finding that a negligent act could cause a "deprivation" within the meaning of § 1983, concluded that the inmate had successfully alleged a deprivation of property under color of state law, but went on to rule that those allegations alone were not enough to state a claim for relief under § 1983 since nothing in the Fourteenth Amendment "protects against all deprivations of life, liberty or property by the State. The Fourteenth Amendment protects only against deprivations 'without due process of law.' " *Id.* at ____ U.S. ____, 101 S.Ct. 1913.

Applying this standard to the facts before it in *Parratt*, this Court found that the tort remedies which the State of Nebraska provided as a means of redress for property deprivations satisfied the requirements of due process. In its analysis, this Court concluded that although the acts of the state employee were under color of state law, they were unauthorized and unpredictable and therefore beyond the control of the state. The Court then held that under such circumstances a predeprivation hearing would be impracticable and a postdeprivation hearing providing a meaningful opportunity for a determination of rights

and liabilities would satisfy the requirements of due process. *Id.* at ___ U.S. ___, 101 S.Ct. 1917.

As recognized by the Court of Appeals' decision,[3] Georgia's tort law provides a remedy against state officials who have acted outside the scope of their authority as Van Howell alleges Louis Raulerson acted. *Undercofler v. Seaboard Air Line Railroad Co.*, 222 Ga. 822, 826-827 (1966). *Norred v. Dispain*, 119 Ga.App. 29, 31 (1969). *Irwin v. Arrendale*, 117 Ga.App. 1, 2 (1967). Although in *Parratt* Nebraska provided a statutory tort remedy via a tort claims act, this Court's reliance in *Parratt* on *Ingraham v. Wright*, 430 U.S. 651 (1977), and its emphasis on the adequacy of postdeprivation remedies provided by "common law safeguards" make it clear that a meaningful postdeprivation common law tort remedy is adequate to satisfy the requirements of due process.[4] *Parratt v. Taylor*, ___ U.S. ___, 101 S.Ct. 1908, 1916 (1981).

The instant case is squarely within the holding in *Parratt*. It involves a complaint which alleges a deprivation of a property interest without due process by a state official acting in a random and unauthorized manner but which does not allege that state tort law does not provide a meaningful postdeprivation remedy, the only possible type of remedy in such a situation.

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[3] *See Howell v. Tanner*, 650 F.2d 610, 616 at note 9 (5th Cir. 1981).

[4] This Court's reliance on the *Ingraham* decision which, as this Court pointed out in *Parratt*, involved "both an intentional act . . . and a deprivation of liberty," also makes it clear that neither Van Howell's allegations of intentional acts nor the possibility that the deprivation alleged by Van Howell was of his liberty interests, as opposed to his property interests as the Court of Appeals concluded, removes the instant case from the parameters of the *Parratt* decision. *See Sheppard v. Moore*, 514 F.Supp. 1372 (M.D.N.C. 1981).

The instant case is also squarely within the rationale of *Parratt* that due process involves deprivations without due process of law, not just deprivations, and that in situations where the action taken by an employee of the state is unanticipatable and accordingly a predeprivation hearing is not possible, a plaintiff must show that there is no adequate and meaningful state tort remedy available. Stated differently, a tort involving an unanticipatable deprivation of property or liberty does not rise to the level of a constitutional violation so long as state tort law provides an adequate and meaningful postdeprivation hearing to determine the rights of affected persons.

Van Howell's complaint as to the January 3, 1976 shooting incident alleges no more than what, absent the fact that Van Howell alleges Louis Raulerson was in uniform and standing beside a state vehicle, would otherwise be a garden variety state tort claim. This Court's holding in *Parratt* requires that such claims are to be heard at the state level absent allegations that redress is not available at that level. No such allegations were made by Van Howell. Accordingly, the Court of Appeals' decision in this matter reversing the district court's granting of Louis Raulerson's motion to dismiss should be reversed.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit should be granted.

Respectfully submitted,

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Appendix

APPENDIX A

Van HOWELL, Plaintiff-Appellant,

v.

Joe D. TANNER, Individually and as Commissioner of Department of Natural Resources, et al., Defendants-Appellees.

No. 79-3374.

United States Court of Appeals,
Fifth Circuit.
Unit B

July 13, 1981.

Civil rights action was brought against Commission of State Department of Natural Resources, state game and fish rangers, sheriff, and others. The United States District Court for the Middle District of Georgia at Valdosta, J. Robert Elliott, J., granted summary judgment in favor of all but one defendant, and dismissed claim against remaining defendant, and plaintiff appealed. The Court of Appeals, Henderson, Circuit Judge, held that: (1) state game and fish rangers had probable cause to arrest defendant, and thus could not be liable in civil rights action based on claim of false arrest, where defendant was in a game management area carrying a firearm, despite contention that possession was lawful because gun was broken; (2) absent showing of direct involvement by Commissioner of DNR, he could not be liable; (3) sheriff was not liable on the basis of his action in swearing out the accusations for trespass and firearm offenses where he was required by state law to issue accusations upon receipt of instructions from district attorney; (4) cause of action was stated against one of the game and fish rangers

arising from a prior shooting incident; and (5) in granting motion to transfer venue for the convenience of parties and witnesses and in the interest of justice, district judges took proper account of interest of justice when they considered the forum in which judicial resources could most efficiently be utilized and the place in which the trial would be most easy, expeditious and inexpensive.

Affirmed in part and reversed in part.

1. Federal Civil Procedure 2547

Despite the contention by opponent of motion for summary judgment that he had no notice of date of hearing on motion and that he had affidavits he would have filed had he known that decision would be forthcoming so quickly, opponent's interests were fully protected by local rule which defined a ten-day period within which all materials had to be filed in order to receive consideration. Fed.Rules Civ.Proc. Rules 56, 56(c), 28 U.S.C.A.; U.S. Dist.Ct. Rules M.D.Ga., Rule (b, e).

2. Civil Rights 13.4(3)

State game and fish rangers had probable cause to arrest defendant, and thus could not be liable in civil rights action based on claim of false arrest, where defendant was in a game management area carrying a firearm, despite contention that possession was lawful because gun was broken. 42 U.S.C.A. § 1983.

3. Civil Rights 13.10

Defense of probable cause negates a civil rights claim based on alleged false arrest, and once probable cause has been established, legality of the arrest is not affected by a collateral bad faith of the arresting officer or a subsequent dismissal or acquittal of the charges. 42 U.S.C.A. § 1983.

4. Civil Rights 13.4(3)

Defendant's conviction for offense for which he was arrested conclusively established that arrest was made with probable cause, precluding civil rights action for false arrest, absent showing of fraud, perjury or corrupt means, despite subsequent declaration by state court that statute under which defendant was arrested was unconstitutional.

5. Civil Rights 13.7

Where arrest by state game and fish rangers was not effected pursuant to either a direct order from Commissioner of the Department of Natural Resources or custom or policy instituted by the Commissioner, Commissioner could not be liable under civil rights statute, and would not be responsible on a respondeat superior theory even if the rangers' actions were unconstitutional. 42 U.S.C.A. § 1983.

6. Civil Rights 13.4(3)

Sheriff could not be liable under civil rights statute for alleged false arrest and malicious prosecution, based on his action in swearing out accusations for offenses for which plaintiff had been arrested, where sheriff was required by state law to issue accusations upon receipt of instructions from the district attorney. 42 U.S.C.A. § 1983; Ga.Code, § 27-704.

7. Civil Rights 13.13(1)

Where state law obligates an official to perform a ministerial duty, good faith is presumed, in ensuring civil rights action, absent express evidence on the record of bad motive.

8. Civil Rights 13.7

Though private company had entered into lease agreement with state so that lands on which plaintiff had been arrested by state game and fish rangers were established as a game and fish management area, respondeat superior would provide no right of recovery against the company under civil rights statute based on alleged false arrest and malicious prosecution by the rangers, nor did the contractual lease agreement constitute concerted action with the state such as is necessary to make out an independent cause of action against the private individual under civil rights statute. 42 U.S.C.A. § 1983.

9. Civil Rights 13.12(8), 13.13(1)

Claimant under civil rights statute must state facts showing that state has deprived him of a liberty or property interest without due process, and if the facts alleged, when proven, would establish that officer acted under color of state law and that conduct deprived claimant of a constitutionally protected interest, claimant must have an opportuinty to prove his case. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 14.

10. Civil Rights 13.12(3)

Plaintiff in civil rights action sufficiently pleaded state action with respect to shooting by office-duty state game and fish ranger, where ranger was dressed in uniform and standing beside a Department of Natural Resources vehicle and dispute centered on a DNR-related problem. 42 U.S.C.A. § 1983.

11. Civil Rights 13.4(1)

Malicious infliction of bodily injury constitutes deprivation of a property interest without due process for

purposes of civil rights statute. U.S.C.A.Const. Amend. 14; 42 U.S.C.A. § 1983.

12. Civil Rights 13.10

Existence of state tort claim does not negate entitlement of a litigant to federal civil rights action as well. 42 U.S.C.A. § 1983.

13. Federal Courts 105

On motion to transfer action for convenience of parties and witnesses and in the interest of justice, plaintiff's choice of forum should not be disturbed unless it is clearly outweighed by other considerations. 28 U.S.C.A. § 1404.

14. Federal Courts 791, 819

Once trial judge decides that transfer of venue is justified for the convenience of parties and witnesses and in the interest of justice, ruling can be overturned only for clear abuse of discretion, and presumption in favor of district court judge is heavy. 28 U.S.C.A. § 1404.

15. Federal Courts 104

In applying statute providing for a transfer to another district for the convenience of parties and witnesses and in the interest of justice, efforts to select one district to avoid or obtain particular rulings of another district is disfavored. 28 U.S.C.A. § 1404.

16. Federal Courts 104

In granting motion to transfer venue for the convenience of parties and witnesses and in the interest of justice, district judges took proper account of interests of justice when they considered the forum in which judicial resources could most efficiently be utilized and the place

in which the trial would be most easy, expeditious and inexpensive. 28 U.S.C.A. § 1404.

J. E. B. Stewart, Jonesboro, Ga., for plaintiff-appellant.

Mark A. Dickerson, Isaac Byrd, Asst. Attys. Gen., Atlanta, Ga., William P. Langdale, Jr., Valdosta, Ga., for defendants-appellees.

Ronald A. Lowry, Atlanta, Ga., for Raulerson.

Appeal from the United States District Court for the Middle District of Georgia.

Before JONES, FAY and HENDERSON, Circuit Judges.

HENDERSON, Circuit Judge:

The appellant, Van Howell, filed suit in the United States District Court for the Northern District of Georgia pursuant to provisions of 42 U.S.C. §§ 1983 and 1985(3) [1] alleging that he was maliciously arrested and prosecuted as well as physically accosted in violation of his constitutional rights. Named as defendants were the Georgia Department of Natural Resources (DNR); Joe D. Tanner, Commissioner of DNR; Louis T. Raulerson, Ross Knowlton and Wallace King, employees of the DNR; J. Leon Raulerson, the former sheriff of Echols County, Georgia; and The Langdale Company, the owner of the land subject to a game management contract with the DNR.

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[1] The § 1985(3) claims were dismissed by order of May 22, 1978, because the complaint was devoid of factual allegations from which it could be concluded that Howell was a member of a class against which invidious bias might exist. *See McLellan v. Mississippi Power & Light Company*, 526 F.2d 870 (5th Cir. 1976) *modified* 545 F.2d 919 (5th Cir. 1977); *Fallis v. Toastmasters International, Inc.*, 467 F.2d 1389 (5th Cir. 1972); *Jacobson v. Industrial Foundation of Permian Basin*, 456 F.2d 258 (5th Cir. 1972).

On June 21, 1975, Howell was arrested and cited by state game and fish officers Knowlton and King on charges of criminal trespass and possession of a firearm. Louis T. Raulerson conferred with the officers at the arrest site. Shortly thereafter warrants on the same charges were sworn out against Howell by Raulerson. On January 28, 1976, J. Leon Raulerson, brother of Louis Raulerson and the sheriff of Echols County, drew up an affidavit in support of the accusations which were then pending in Echols Superior Court.

Meanwhile earlier that month, on January 3, 1976, Louis T. Raulerson had had a previous encounter with Howell. While driving near Halo, Georgia in the company of his daughter, Howell was waved down by Raulerson, who was standing by the DNR car which had been assigned to him. Raulerson was dressed in his DNR uniform but was off-duty. When he had stopped, Howell was questioned by Louis Raulerson about nails which had been placed on the property leased by The Langdale Company to DNR. The parties disagree on the sequence of events which followed. Howell contends that Raulerson maliciously and without warning shot him several times with a DNR rifle and then beat and kicked him while he lay unconscious on the roadway. By Raulerson's account the trouble began when Howell became argumentative and waved a pistol at him. Allegedly Raulerson shot Howell in self defense. Three days later, on January 6, 1976, a warrant based on an affidavit by Raulerson was issued for the arrest of Howell and his daughter on the charge of aggravated assault against Raulerson. The criminal proceeding on this charge was terminated a month later, however, when the county grand jury

returned a "no bill".[2]

Eventually Howell also prevailed on the charges against him for criminal trespass and unlawful possession of a firearm. These counts came on for trial on February 5, 1976. The jury found Howell not guilty of trespass but guilty of a firearm offense. On appeal of the firearm conviction to the Supreme Court of Georgia, Howell's conviction was reversed on grounds that the Georgia statute permitting prosecution was unconstitutional.[3]

Howell filed this civil suit in the Northern District of Georgia on January 2, 1978. The district court judge dismissed DNR as a party defendant, but denied the motion to dismiss filed by the other defendants. Thereafter a motion for change of venue filed by the defendants was granted and the cause was transferred to the Middle District of Georgia, Valdosta Division.

Additional motions were filed by the defendants in the Middle District of Georgia. The district judge granted motions for summary judgment as to all the defendants except Louis Raulerson "for the reasons asserted by counsel" in their briefs. He dismissed the claim against Louis Raulerson because he found it to be "too nebulous to rise to the constitutional proportions". The final

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[2] The Echols County Grand Jury also returned a "no bill" with respect to Howell's aggravated assault charge against Raulerson arising from the same January 3, 1976 incident.

[3] *Howell v. State*, 238 Ga. 95, 230 S.E.2d 853 (1976). Ga.Code Ann. § 45-116 provides that anyone who violates regulations promulgated by a commission is guilty of a misdemeanor and can be punished accordingly. In the opinion of the Georgia Supreme Court, the statute unconstitutionally delegated legislative authority to the commission by permitting it to make regulations the violations of which constituted a misdemeanor. No consideration was given to the evidentiary merits of the case.

judgment from which this appeal is taken was rendered on August 30, 1979.

Howell assigns as error (1) the award of summary judgment to all defendants except Louis Raulerson and the granting of Louis Raulerson's motion to dismiss; (2) the change of venue from the Northern District of Georgia to the Middle District of Georgia; (3) the refusal to remand the case to the Northern District of Georgia; (4) the entry of final judgment by the clerk; (5) the denial of his motion to amend his complaint; (6) the refusal to reinstate the DNR as a party defendant; and (7) the dismissal of the "summary of events" filed by Howell.

[1] The appellant attacks the summary judgment ruling on procedural as well as substantive grounds. He first focuses on the fact that he received no notice of the date of the hearing on the motion. He purportedly had affidavits he would have filed had he known that a decision on the motion would be forthcoming so quickly. At oral argument, Howell's counsel identified this lack of notice as the principal error in the case and the main reason for reversal of the summary judgment.

Howell's counsel reads the Fed.R.Civ.P. 56(c) requirement for notice of the hearing date to mean that he will know the outside time in which opposing affidavits must be served.[4] The appellant cannot dispute the fact that he had notice of the pendency of the motion, though, because he filed a response. The appellees answer that the litigants' rights are preserved by a local rule for the Middle District of Georgia which provides that (1) a respondent

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[4] Fed.R.Civ.P. 56(c) (1971) states in pertinent part:

"The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits."

to a motion for summary judgment must submit all responses, briefs or affidavits within ten days of service of the motion; and (2) all motions are decided without hearing unless otherwise ordered by the court on its own motion or at the request of counsel.[5] M.D.Ga.R. (b), (e) (1960). Fed.R.Civ.P. 56(c) contemplates that the ten-day advance notice of the earliest possible hearing date must be given so that the adverse party will have an opportunity to fully prepare his case. The respondent's Rule 56 interests were fully protected by the local rule which defined a ten-day period within which all materials must be filed in order to receive consideration from the court. *Kibort v. Hampton*, 538 F.2d 90, 91 n. 1 (5th Cir. 1976).

Howell also maintains that the adverse summary judgment was erroneously rendered as a matter of law. We do not agree with the appellant. We find, as did the district judge, that the facts and law were adequately and accurately presented by the parties in their briefs on motion in the trial court. For the following reasons, the district judge was correct in entering summary judgment favorable to the appellees.

[**2-4**] Game and Fish rangers Knowlton, King and Raulerson are charged with deprivation of Howell's constitutionally-protected interests in arrest and prosecution accomplished with due process of law. *See Cook v. Houston Post*, 616 F.2d 791 (5th Cir. 1980); *Reeves v. City of Jackson, Mississippi*, 608 F.2d 644 (5th Cir. 1979). The appellees had probable cause to believe in good faith that Howell broke the law on June 21, 1975. Howell admitted

[5] An oral hearing is not required by Fed.R.Civ.P. 56(c). *Davis v. Howard*, 561 F.2d 565, 570-71 (5th Cir. 1977); *Benson v. Matthews*, 554 F.2d 860, 862 (8th Cir. 1977); *Kibort v. Hampton*, 538 F.2d 90, 91 (5th Cir. 1976).

that the area in which he was approached was a game management area. (Appellant's Reply Brief at 24). He further concedes that he was carrying a firearm, but he says the possession was lawful because the gun was broken. (Transcript at 173). The defense of probable cause negates a § 1983 claim based on an alleged false arrest. *Pierson v. Ray*, 386 U.S. 547, 555, 87 S.Ct. 1213, 1218, 18 L.Ed.2d 228 (1967); *Hunter v. Clardy*, 558 F.2d 290, 291 (5th Cir. 1977); *Rodriguez v. Jones*, 473 F.2d 599, 604-05 (5th Cir.), *cert. denied* 412 U.S. 953, 93 S.Ct. 3023, 37 L.Ed.2d 1007 (1973). Once probable cause has been established, the legality of the arrest is not affected by collateral bad faith of the arresting officer or a subsequent dismissal or acquittal of the charges.[6] *Hunter v. Clardy*, 558 F.2d at 292; *Perry v. Jones*, 506 F.2d 778, 780 (5th Cir. 1975). Knowlton, King and Louis T. Raulerson were entitled to summary judgment as a matter of law.

[5] Joe D. Tanner's lack of personal participation in Howell's arrest dictates the summary judgment in his favor. The arrest was not effected pursuant to either a direct order from Tanner or a custom or policy instituted by Tanner. Since there is no showing of direct involvement by Tanner in the arrest, he cannot be liable under § 1983. *See Reimer v. Short*, 578 F.2d 621, 625 (5th Cir. 1978) *cert. denied* 440 U.S. 947, 99 S.Ct. 1425, 59 L.Ed.2d

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[6] Howell's conviction for the firearm offense conclusively established that the arrest was made with probable cause, absent a showing of fraud, perjury or corrupt means. *Bergstralh v. Lowe*, 504 F.2d 1276, 1278 (9th Cir. 1974), *cert. denied* 420 U.S. 930, 95 S.Ct. 1131, 43 L.Ed.2d 402 (1975). Arguably this presumption survived intact after the Georgia Supreme Court's reversal on other than evidentiary grounds. Furthermore, the officers could not have known that the Georgia statute would be declared unconstitutional. The *Howell* decision was the opinion of a divided court and represented a shift in view which was foreshadowed by the most recent of precedent only. *See Sundberg v. State*, 234 Ga. 482, 216 S.E.2d 332 (1975).

635 (1979); *Locust v. DeGiovanni*, 485 F.Supp. 551, 552 (E.D.Pa.1980).[7]

[6-8] Summary judgment was also authorized for Sheriff Leon Raulerson. In his deposition, Howell stated that he included Raulerson as a party only because his action in swearing out the accusations for the trespass and firearms offenses made him a "prosecutor". Raulerson is required by state law to issue accusations upon receipt of instructions from the district attorney as was the case here. Ga.Code Ann. § 27-704 (1972) (current version at Ga.Code Ann. § 27-704 (Supp.1980)). Where state law obligates an official to perform a ministerial duty, good faith is presumed absent express evidence on the record of bad motive. *Tucker v. Maher*, 497 F.2d 1309, 1313 (2d Cir.) *cert. denied* 419 U.S. 997, 95 S.Ct. 312, 42 L.Ed.2d 271 (1974).[8]

[9] With respect to the claim against Louis Raulerson

---

[7] It is clear that Tanner would not be responsible on a *respondeat superior* theory, even if the rangers' actions were unconstitutional. *Thompson v. Bass*, 616 F.2d 1259, 1268 (5th Cir. 1980), *cert. denied* ___ U.S. ___, 101 S.Ct. 399, 66 L.Ed.2d 245 (1981).

[8] In his complaint Howell alleged that The Langdale Company entered a lease agreement with the State of Georgia so that certain lands in Echols County were established as a "game and fish management area". He further averred that Louis T. Raulerson and J. Leon Raulerson acted as agents of The Langdale Company in signing warrants and executing accusations respectively against him. The Langdale Company offered evidence proving that it did not employ any other of the named defendants, nor did it authorize any of the named defendants to perform any of the acts upon which Howell bases his claims. Furthermore, *respondeat superior* would provide no right of recovery against The Langdale Company pursuant to § 1983. *Thompson v. Bass*, 616 F.2d 1259, 1268 (5th Cir. 1980) *cert. denied* ___ U.S. ___, 101 S.Ct. 399, 66 L.Ed.2d 245 (1981). Finally, the contractual lease agreement does not constitute concerted action with the state such as is necessary to make out an independent cause of action against a private individual under § 1983. *See generally Vance v. Billingsly*, 487 F.Supp. 439, 442 (E.D.Tenn., N.D.1980).

arising from the January 3, 1976 shooting incident, however, we think the appellant alleged sufficient facts to withstand a motion to dismiss. A claimant must state facts showing that the state has deprived him of a liberty or property interest without due process of law. *Marrero v. City of Hialeah*, 625 F.2d 499, 519 (5th Cir. 1980) (U.S. app. pending). If these facts, when proven, would establish that the officer acted under color of state law and the conduct deprived the claimant of a constitutionally protected interest, then the plaintiff must have an opportunity to prove his case.

[**10-12**] In the complaint, Howell asserted that Louis Raulerson, while dressed in his ranger uniform and standing beside a DNR vehicle, stopped him and threatened him with death if Howell were found to have placed "nails in the access road to the reserve". Given these references in the pleading to indicia of official state authority, coupled with the contention that the dispute centered on a DNR-related problem, we find that the appellant sufficiently pleaded state action. The magic words "under color of state law" are not absolutely necessary to state a § 1983 claim when factual allegations in the complaint clearly point in this direction. *Geach v. Moynahan*, 207 F.2d 714, 716-17 (7th Cir. 1953). Unquestionably, the malicious infliction of bodily injury as alleged by Howell constitutes deprivation of a property interest without due process of law. Hence, we are compelled to reverse the judgment of the district court granting Louis Raulerson's motion to dismiss for failure to state a cause of action and remand Howell's claim for a hearing on the merits.[9]

---

[9] The same set of facts may give rise to violations of both the federal statute and Georgia tort law. The rights protected by each are not necessarily identical, however, nor are the elements composing each

Assignments of error two and three are directed to the venue orders entered by the district judges in this case. The appellant argues that both judges abused their discretion in holding that the Middle District of Georgia was the appropriate venue because they did not consider the "interests of justice".

[**13, 14**] A district judge has the authority to transfer an action to any district in which it might have been brought for the convenience of parties and witnesses and in the interest of justice. 28 U.S.C. § 1404 (1976). The plaintiff's choice of forum should not be disturbed unless it is clearly outweighed by other considerations. *Simmons Ford, Inc. v. Consumers Union of United States, Inc.*, 490 F.Supp. 106, 107 (W.D.Mich., S.D.1980). Once a trial judge decides that a transfer is justified, though, his ruling can only be overturned for a clear abuse of discretion. The presumption in favor of the district court judge is heavy. Appellate review is limited because it serves little purpose to reappraise such an inherently subjective decision. *Codex Corp. v. Milgo Electronic Corp.*, 553 F.2d 735, 737 (1st Cir.) *cert. denied* 434 U.S. 860, 98 S.Ct. 185, 54 L.Ed.2d 133 (1977).

[**15, 16**] The appellant suggests that justice is not served by hearing his case in a district where he believes his likelihood of success on the merits would be prejudiced by extraneous factors. This argument manifests a misconception of the "interests of justice" standard. In applying § 1404, efforts to select one district to avoid or obtain particular rulings of another district is disfavored. *Cheeseman v. Carey*, 485 F.Supp. 203, 215 (S.D.N.Y.) *remanded for dismissal* 623 F.2d 1387 (2d Cir. 1980);

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cause of action. Accordingly, the existence of a state tort claim does not negate the entitlement of a litigant to a federal action as well. *Briley v. State of California*, 564 F.2d 849, 854 n. 4 (9th Cir. 1977).

McCrystal v. Barnwell County, 422 F.Supp. 219, 225 (S.D.N.Y.1976). The judges took proper account of the interests of justice when they considered the forum in which judicial resources could most efficiently be utilized and the place in which the trial would be most "easy, expeditious and inexpensive." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 S.Ct. 839, 843, 91 L.Ed. 1055, 1062 (1947); *ROC, Inc. v. Progress Drillers, Inc.*, 481 F.Supp. 147, 152 (W.D.Okl.1979); *Bartolacci v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 476 F.Supp. 381, 382-83 (E.D.Pa.1979); *Pope v. Missouri Pacific Railroad Co.*, 446 F.Supp. 447, 451 (W.D.Okl. 1978). We affirm both venue determinations.

We have carefully reviewed the record and find no merit in assignments of error four through seven.[10]

For the foregoing reasons, the judgment of the district court is AFFIRMED in part and REVERSED in part.

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[10] We do think assignment of error six warrants some mention. At the time it issued the order dismissing the DNR, the district court did not have the benefit of *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) which overruled *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961), the case relied upon by the trial court. *Monell* holds that a municipal governing body may be a "person" subject to liability under 42 U.S.C. § 1983. However, *Monell* has no relevance to the dismissal of DNR, because the Supreme Court's decision is " 'limited to local government units which are not considered part of the State for Eleventh Amendment purposes'." *Bogard v. Cook*, 586 F.2d 399, 410 (5th Cir. 1978) *cert. denied* 444 U.S. 883, 100 S.Ct. 173, 62 L.Ed.2d 113 (1979) (citing *Monell v. New York City Dept. of Social Services*, 436 U.S. at 690 n. 54, 98 S.Ct. at 2035-36 n. 54, 56 L.Ed.2d at 635 n. 54 (1978).

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNIT B

No. 79-3374

VAN HOWELL,
Plaintiff-Appellant,

versus

JOE D. TANNER, individually and as Commissioner of Department of Natural Resources, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Georgia

---

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion July 13, 1981, 5 Cir., 198__, ____ F.2d ____).

(SEP 18 1981)

Before JONES, RAY and HENDERSON, Circuit Judges.

PER CURIAM:

(√) The Petition for Rehearing is DENIED and no member of this panel nor Judge of this Administrative Unit in regular active service having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16; Fifth Circuit Judicial Council Resolution of January 14, 1981), the suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the judges in regular active service of this Administrative Unit having been polled at the request of one of said judges and a majority of said judges not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16; Fifth Circuit Judicial Council Resolution of January 14, 1981), the suggestion for Rehearing En Banc is also DENIED.

( ) A member of this Administrative Unit in active service having requested a poll on the reconsideration in this cause en banc, and a majority of the judges in active service of said unit not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

CLERK'S NOTE:
SEE RULE 40
FRAP AND LOCAL
RULE 17 FOR
STAY OF THE
MANDATE

/s/ ALBERT J. HENDERSON
United States Circuit Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA VALDOSTA DIVISION

VAN HOWELL, *Plaintiff*, v. JOE D. TANNER, et al., *Defendants.*	CIVIL ACTION NO. 79-2-VAL

MEMORANDUM AND ORDER ON DEFENDANTS' MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

The Defendants, Joe D. Tanner, Wallace King, Ross Knowlton, Louis T. Raulerson, J. Leon Raulerson, and The Langdale Company, have each filed motions to dismiss the Plaintiff's complaint, or in the alternative for summary judgment, and have filed briefs and supplemental matter in support thereof. The Plaintiff has filed a brief in opposition to these motions. The Court has given consideration to these matters and has reviewed pertinent portions of the discovery material and makes the following determination.

For the reasons asserted by counsel in the respective motions and the briefs filed in support thereof, the motions of the Defendants, Joe D. Tanner, Wallace King, Ross Knowlton, J. Leon Raulerson, and The Langdale Company, for summary judgment are sustained and the Plaintiff's complaint is dismissed with prejudice as to them.

This leaves for consideration the motion of the Defendant, Louis T. Raulerson. The Plaintiff's complaint arises from an allegation of trespass and a physical altercation between the Plaintiff and the Defendant, Louis T. Raulerson, in the course of which the Plaintiff suffered a gunshot wound for which he seeks damages, invoking the provisions of 42 U.S.C. §1983.

It is the Court's view that the Plaintiff's complaint against the Defendant, Louis T. Raulerson, does not set out a claim cognizable under the Civil Rights statute referred to. This is simply an assault and battery claim which should be prosecuted under the appropriate state statute in a state court. Section 1983 was not intended to pre-empt state laws in their proper role of vindicating what are essentially state-guaranteed rights. Stated otherwise, the Court concludes that the federal claim here asserted is too nebulous to rise to the constitutional proportions necessary to give this Court jurisdiction. Accordingly, the motion of the Defendant, Louis T. Raulerson, to dismiss the Plaintiff's complaint as to him is sustained, this dismissal, however, being without prejudice to the right of the Plaintiff to reassert his claim in an appropriate state forum if he chooses to do so.

IT IS SO ORDERED this 29th day of August, 1979.

/s/ ROBERT ELLIOTT
United States District Judge

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1981

LOUIS RAULERSON,	§	
	§	
Petitioner,	§	
	§	
v.	§	No. _____
	§	
VAN HOWELL,	§	
	§	
Respondent.	§	

STATEMENT

Pursuant to Rule 28.2 of the Rules of the Supreme Court, this statement certifies that the original and forty (40) copies of a Petition for Writ of Certiorari in the above-styled case were deposited in a United States post office or mailbox, with first-class postage prepaid, and properly addressed to the Clerk of the Supreme Court of the United States. This mailing took place in Atlanta, Georgia on the afternoon of Thursday, December 17, 1981, within the time permitted by the Rules of the Supreme Court for the filing of a Petition for a Writ of Certiorari in this case.

Respectfully submitted,

Mark A. Dickerson

MARK A. DICKERSON
Assistant Attorney General

Counsel for Petitioner

Sworn to and subscribed
before me this 17th day
of December, 1981.

Notary Public

My commission expires:

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1981

LOUIS RAULERSON,	§	
	§	
Petitioner,	§	
	§	
v.	§	No. _____
	§	
VAN HOWELL,	§	
	§	
Respondent.	§	

CERTIFICATE OF SERVICE

I, MARK A. DICKERSON, Assistant Attorney General, of counsel for the Petitioner Louis Raulerson, do hereby certify that on this date I have served three (3) copies of the Petition for a Writ of Certiorari to the Court of Appeals for the Fifth Circuit, Unit B, Now the Eleventh Circuit in the above-styled case upon all parties by depositing said three (3) copies of the Petition in a United States post office or mailbox, with first-class postage prepaid, addressed to counsel of record for all parties at their post office addresses, to-wit:

Mr. J.E.B. Stewart
194 South Main Street
Jonesboro, Georgia 30236

Mr. A.W. Touchton
Route 1, Box 174
Lake Park, Georgia 31636

Mr. J. Laddie Boatwright
P.O. Box 1110
Hazelhurst, Georgia 31539

Counsel for Van Howell

Mr. E. Speer Mabry
Suite 825
220 Century Parkway, N.E.
Atlanta, Georgia 30345

Mr. Ronald A. Lowry
Suite 150
3395 N.E. Expressway
Atlanta, Georgia 30341.

Counsel for The Langdale Company

Mr. William Langdale, Jr.
P.O. Box 1547
Valdosta, Georgia 31601

Counsel for J. Leon Raulerson

All parties required to be served have been served.

This 17th day of December, 1981.

Respectfully submitted,

Mark A. Dickerson

MARK A. DICKERSON
Assistant Attorney General

Counsel for Petitioner

Sworn to and subscribed
before me this 17th day
of December, 1981.

Notary Public

My commission expires: 7-31-85

Opposition

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 81-1210

Louis Raulerson, Petitioner

vs.

Van Howell, Respondent

RESPONSE OF VAN HOWELL TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, UNIT B, NOW THE ELEVENTH CIRCUIT.

MOTION OF VAN HOWELL, RESPONDENT, TO FILE HIS RESPONSE IN FORMA PAUPERIS.

Now comes Van Howell, Respondent herein, and files this, his Motion to be allowed to proceed in this action in Forma Pauperis. Because of his poverty he is unable to pay for the printing of his response.

Respectfully submitted,

J. E. B. Stewart

J. E. B. Stewart
Of Counsel for Van Howell.

OPINIONS BELOW

The Order of Honorable Richard C. Freeman, Judge, Federal District Court for the Northern District of Georgia, dated May 22, 1978, is attached hereto as Appendix "A".

Letter from Honorable Francis J. Lorson, Chief Deputy Clerk, United States Supreme Court dated March 1, 1982, is attached hereto as Appendix "B".

JURISDICTION

This Court is without jurisdiction to consider this petition for the Writ of Certiorari because petitioner has failed to comply with Rule 28.2. of this Court, which reads as follows:

"To be timely filed, a document must be received by the Clerk within the time specified for filing, except that any document shall be deemed timely filed if it has been deposited in a United States post office or mailbox, with first class postage prepaid, and properly addressed to the Clerk of this Court, within the time allowed for filing, and if there is filed with the Clerk a notarized statement by a member of the Bar of this Court, setting forth the details of the

10/

mailing, and stating that to his knowledge the mailing took place on a particular date within the permitted time".

Nowhere in this Rule does it state that a certificate of Counsel is sufficient but specifically requires the filing of "a notarized statement by a member of the Bar of this Court,"..... "that to his knowledge(underscoring ours) the mailing took place on a particular date within the permitted time".

Nowhere in his certificate does he state that this mailing was done "to his knowledge".

This Rule would seem to demand that a member of the Bar of this Court, other than the person doing the mailing sign an affidavit stating that he saw the person doing the mailing place the article in the U. S. postoffice or mailbox.

It would seem that the certificate should have stated whether the article was placed in a post office or in a mailbox. It could not have been placed in both places.

This Court is faced with the further problem of considering this case for the further reason that petitioner has violated Rule 21.5. of this Court, which reads as follows: "The failure of a petitioner to present with accuracy, (underscoring ours) brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition".

Petitioner is attempting to do in this Court what he has done in the Courts below and that is to duck and dodge and to inaccurately state the facts.

On page 4 of his petition petitioner stated: "Subsequently Van Howell was shot in the right side of his body". It is not said that Louis Raulerson shot Howell although the

undisputed evidence is that he shot Howell, not once but twice, the first shot grazing his upper right side and when he did not fall Raulerson took better aim and the second bullet pierced his right lung, exploding as it passed through his body and the fragments came out through his back and he fell unconscious to the road where he was standing. That as he fell Raulerson then aimed his rifle at the 16 year old daughter of Howell and shot at her, but missed. She jumped into the car Howell had been driving and went for help. When she returned to where the shooting took place Raulerson had beaten, kicked and stomped Howell unmercifully, while lying unconscious.

A further deliberate misstatement of fact by attorneys for petitioner is contained in the petition, on page 3, under, "STATEMENT OF THE CASE", as follows:

"Van Howell's federal claims, as recognized by the Court of Appeals, were in essence that he was deprived of property under color of state law in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States as the result of two events: (1) an incident on June 21, 1975 in which he was charged with unlawful possession of a firearm in a game management area;"....

This Court is familiar with the axiom, "Ahalf truth is worse than a lie". A "half truth" is exactly what attorneys for petitioner told this Court when they said: "(1) an incident on June 21, 1975 in which he was charged with unlawful possession of a firearm in a game management area".

The whole truth of what happened is that two days thereafter, on June 23, 1975, Louis Raulerson did, with malice aforethought and without probable cause, again charged Howell with the offense of "unlawful possession of a firearm in a game management area". This second charge for the same offense constituted unlawful harassment and intimidation.

It will be noted that on June 21, 1975, Howell was charged only with the offense of "unlawful possession of a firearm in a game management area". At that time, no mention was made that he would be charged with the offense of "criminal trespass" upon the lands owned by The Langdale Company. The reason Howell was not charged with the offense of "criminal trespass" upon the lands owned by The Langdale Company on June 21, 1975, is that at that time said Louis Raulerson had no authority to make such a charge without first obtaining permission from Joe D. Tanner, Commissioner, Georgia Department of Natural Resources and from The Langdale Company, owner of said lands.

At the time stated, there existed a contract between the parties, above named, setting forth certain rights and duties of the parties. Paragraph 5 of said contract reads as follows: " The Department shall (underscoring ours) through its agents and employees, cooperate to prevent unauthorized grazing, timber cutting, burning, and general trespass on said lands and will promptly report to the person designated in paragraph 14 all known unauthorized grazing, cutting, burning, and general trespass."

Copy of said contract attached hereto as Appendix "C".

There is no reasonable or logical explaination of why said Louis Raulerson waited until June 23, 1975, before charging Howell with the offense of criminal trespass upon the lands owned by The Langdale Company, except that he was duty bound, under terms of the contract, to first notify his superior, Joe D. Tanner and The Langdale Company of the alleged trespass and to gain their joint permission before charging Howell with the offense of criminal trespass. Howell was acquitted of both charges; by a jury of the criminal trespass charge and by The Supreme Court of Georgia of the charge of Unlawful possession of a firearm in a game management area. This charge was found to be unconstitutional.

(Howell v State, 238 Ga. 95)

Because of these unlawful, vindictive and oppressive charges respondent has alleged in his complaint that his Constitutional and civil rights have been violated as well as his rights against false arrest under Georgia tort laws.

For reasons heretofore stated respondent believes that sufficient reasons have been shown to persuade this Court that the petition for the Writ of Certiorari filed by Petitioner Louis Raulerson should be denied.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

ARTICLE V of the United States Constitution.

ARTICLE VIII of the United States Constitution prohibiting cruel and unusual punishment.

ARTICLE XIV of the Constitution of the United States.

42 U. S. C. 1983.

STATEMENT OF THE CASE.

Respondent believes that he has heretofore given a sufficient STATEMENT OF THE CASE to place all relevant facts before the Court and that to give a further statement would be repetitious.

REASON FOR NOT GRANTING THE WRIT.

Reasons, as contended by respondent, for not granting the Writ have been heretofore stated and he relies upon such contentions plus the Opinion and Order of Honorable Richard C. Freeman, Judge, Federal District Court for the Northern District of Georgia dated May 22, 1978, as to why he refused to dismiss petitioner, Louis Raulerson, as a party defendant at that time. Said Opinion and Order of Judge Freeman is attached hereto as Appendix "A".

Petitioner relies solely upon the case of Robert Parratt, et al v. Bert Taylor, Jr., 68 L. Ed. 2d 420 as his reason for applying for the Writ. The facts in Parratt, supra

when compared to the facts in the case at Bar are so completely different as to border upon if not completely to be ludicrous.

In Parratt, supra, the facts show that he was an inmate in a Nebraska prison who ordered by mail certain hobby materials valued at about $23.00 which were lost after delivery to the prison and that loss was his only allegation of a violation of his Civil Rights.

In the case at bar respondent alleged that petitioner, Louis Raulerson, over the course of many months and even years hounded, harassed and intimidated him unlawfully, by making unlawful searches of his vehicle, day and night, and without probable cause, one reason being that Raulerson hated respondent because he was part Cherokee Indian and another being that said Raulerson was protecting the wildlife on lands belonging to The Langdale Company, whose owner H. Langdale got him the job as Game Warden and thought respondent was killing the Langdale deer, a charge that has never been proven.

After having arrested respondent illegally on June 21, 1975 and again on June 23, 1975, this harassment continued until January 3, 1976, when said Raulerson, without provocation, attemped to kill respondent and his 16 year old daughter. The only "due process" respondent received at this time came from Raulerson. He illegally arrested respondent, gave him a trial there on this remote road in Echols County, found him guilty and proceeded with the intended execution with a high powered rifle which belonged to the Georgia Department of Natural Resources. At the same time he attempted to murder the 16 year old daughter of respondent in order that there would be no witnesses.

CONCLUSION

For the foregoing reasons, this Petition for the Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit should be denied.

Respectfully submitted,

J. E. B. Stewart
Of Counsel for respondent

194 S. Main Street
Jonesboro, Georgia 30236
Telephone (404) 471-1261.

I hereby certify that I have this day mailed copies of the foregoing response to the following named attorneys with sufficient postage attached for delivery.

Mr. Mark Dickerson, Asst. Attorney General, 132 State Judicial Building, Atlanta, Georgia 30334.

Mr. Kelly Raulerson, P. O. Box 64, Albany, Georgia 31702
Mr. E. Speer Mabry, 2200 Century ParkwayN.E. Atlanta, Ga.30345
Mr. William P. Langdale, Jr., P.O. Box 1547, Valdosta, Ga31601
Mr. Ronald A. Lowry, 3395 Northeast Expressway, Atlanta, Ga. 30341.

This 8th day of March, 1982.

J. E. B. Stewart

81-1210

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Appendix B. Letter from Mr. Francis J. Lorson

Appendix C. Contract between The Langdale Company and Georgia Department of Natural Resources.

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TABLE OF AUTHORITIES

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Parratt v Taylor, 68 L. Ed 2d 420 Page 5.

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MAY 22 1978
BEN H. CARTER, CLERK
By DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

VAN HOWELL

vs.

GEORGIA DEPARTMENT OF NATURAL RESOURCES

CIVIL ACTION

NO. 78-02 A

APPENDIX A

O R D E R

This is an action for damages nominally brought pursuant to 42 U.S.C. §§1983 and 1985(3). The individual defendants are respectively Louis T. Raulerson, Ross Knowlton and Wallace King, officers of the Department of Natural Resources Game and Fish Department, Joe D. Tanner, Commissioner of the Department of Natural Resources and J. Leon Raulerson, the former sheriff of Echols County Georgia. The instant action is presently before this court on "defendants'"[1] motion to dismiss. Before proceeding to the merits of the motion sub judice, a brief review of the allegations and arguments lodged by the respective parties is warranted.

On June 27, 1973, the Langdale Company entered into a game management contract concerning the property upon which the subject actions transpired. Plaintiff avers that the lands in question are wild and unfenced and that he had previously held a possessory interest in them. On June 21, 1975, plaintiff allegedly went upon the subject property for the purpose of retrieving a dog and was arrested by Ross Knowlton, Wallace King and Louis Raulerson for the alleged offenses of trespassing upon and possessing a firearm upon a management area. Mr. Howell was found innocent of the former charge but was convicted by a jury upon the latter on February 5, 1976. This conviction was overturned upon appeal to the

Georgia Supreme Court which held that there was no such offense because the Department of Natural Resources had no power to enact criminal "regulations" such as the one in question, No. 391-4-2-.05.[2] Howell v. State of Georgia, 238 Ga. 95, 230 Ga. 853 (1976).

Thereafter, on January 3, 1976, while dressed in his uniform and operating a Department of Natural Resources vehicle, Louis Raulerson allegedly stopped, argued with and eventually shot plaintiff without provocation or apprehension of any danger to defendant's person. Thereafter, while plaintiff was lying on the ground, defendant Louis Raulerson allegedly kicked plaintiff repeatedly with the result that plaintiff sustained five broken ribs. On January 6, 1976, defendant Louis Raulerson swore out an arrest warrant against plaintiff and his daughter for aggravated assault. On February 3, 1976, the Grand Jury for Echols County, Georgia, returned a "no bill" upon the assault charge. In sum, all of the legal actions brought against plaintiff eventually terminated in his favor.

PLAINTIFF'S CLAIMS UNDER 42 U.S.C. §1985(3)

Plaintiff claims in the first instance that all of the defendants are liable to plaintiff under 42 U.S.C. §1985(3). The Supreme Court has held that in order for a cause of action to be stated under the foregoing statutory provision, it must be found at a minimum that:

(1) the defendants did "conspire to go in disguise on the highway or on the premises of another"

(2) "for the purpose of depriving, either directly or indirectly any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws"

(3) one or more of the conspirators did or caused to be done, "any act in furtherance of the object of [the] conspiracy" whereby another was

(4) (a) "injured in his person or property" or

(b) "deprived of having and exercising any right or privilege of a citizen of the United States."

Griffin v. Breckenridge, 403 U.S. 88, 102-103 (1971). In addition, our Court of Appeals has held that the violation giving rise to an action under §1985(3) must flow from a class based invidious bias. McLellan v. Mississippi Power and Light Company, 526 F.2d 870 (5th Cir. 1976); see also, Fallis v. Toastmasters International, Inc., 467 F.2d 1389 (5th Cir. 1972); Jacobson v. Industrial Foundation of Permian Basin, 456 F.2d 258 (5th Cir. 1972).

Construing the instant complaint in a manner most favorable to plaintiff, it is nevertheless entirely void of factual allegations which could yield the permissible conclusion that plaintiff is a member of any definable class against which an invidious bias might exist. See e.g., Jacobson v. Industrial Foundation of Permian Basin, supra; McLellan v. Mississippi Power and Light Co., supra. When as here all of "the conduct [which plaintiff alleges] was directed at the plaintiff because of his individual or personal traits rather than because of class membership, the... [§1965(3) claim] must be dismissed...." McLellan v. Mississippi Power & Light Co., supra at 877. Accordingly, for the reasons hereinabove expressed, all of plaintiff's claims under 42 U.S.C. §1985(3) are hereby ORDERED to be DISMISSED.

PLAINTIFF'S CLAIMS AGAINST THE GEORGIA DEPARTMENT OF NATURAL RESOURCES AND JOE D. TANNER UNDER 42 U.S.C. §1983

Of course the gravamen of a cause of action under §1983 is somewhat different from that previously discussed, as §1983 is somewhat broader than §1985(3) in that §1983 prohibits unconstitutional acts under color of state law regardless of the source of the motivation. However, §1983 is also narrower in scope in that it applies only to "persons." The State of Georgia, and a fortiori its operating arms, such as the Department of Natural Resources are not "persons." See Collins v. Moore, 441 F.2d 550 (5th Cir. 1971); Sykes v. State of California (Department of Motor Vehicles), 497 F.2d 197 (9th Cir. 1974); Monroe v. Pape, 365 U.S. 167 (1961). Accordingly,

plaintiff's claims against the Georgia Department of Natural Resources are hereby ORDERED to be DISMISSED.

Mr. Tanner, on the other hand, is a state official who would normally be amenable to suit under §1983. See Anderson v. Nosser, 438 F.2d 183 (5th Cir. 1971); Collins v. Moore, supra. Moreover, plaintiff has specifically averred that Mr. Tanner knew or reasonably should have known from Mr. Louis Raulerson's previous record that he had violent and illegal propensities which made his retention as an employee improper. In addition, plaintiff avers that Mr. Tanner may have controlled Mr. Raulerson's activities. These allegations state a claim under a theory of vicarious liability which exists in this circuit and extends to the implied or express duty of superiors to train, direct, control or discipline subordinates. See Ford v. Byrd, 544 F.2d 194 (5th Cir. 1976); Sims v. Adams, 537 F.2d 829 (5th Cir. 1976). Defendant Tanner attempts to refute plaintiff's charges by submitting an affidavit in which he disavows employment, training and supervisory control of the respective defendants. While this information is probative, it is appropriately examined only upon a motion for summary judgment and may not be wielded to penetrate the complaint upon the instant motion to dismiss. Accordingly, for the reasons hereinabove expressed, defendant Tanner's motion to dismiss plaintiff's §1983 claims is hereby DENIED.

"COLOR OF STATE LAW", OFFICIAL IMMUNITY AND THE PENDENT STATE CLAIMS

Defendants Knowlton, Louis Raulerson, King and J. Leon Raulerson attempt to argue at once that their actions were not performed under "color of state law" and that no cause of action lies against defendants because they are exempted from suit by the doctrine of official immunity which purportedly protects officers acting in their official capacities. Neither of these conflicting arguments has merit.

Defendants eventually concede that they were dressed in uniform and that they carried or were driving indicia of state authority at all of the times here in issue. In fact, with respect to the former arrest of plaintiff, defendants in fact wielded the authority of the state. In either instance, a clearer case of acting under color of state law can scarcely be imagined. See Reed v. Philadelphia Housing Authority, 372 F. Supp. 686 (E.D. Pa. 1974); Davidson v. Dixon, 386 F. Supp. 482 (D. Del. 1974); Croy v. Skinner, 410 F. Supp. 117 (N.D. Ga. 1976) (Freeman J.).

With respect to the official immunity argument, defendants are correct that they have available a qualified defense of good faith. Scheuer v. Rhodes, 416 U.S. 232 (1974); Perry v. Jones, 506 F.2d 778 (5th Cir. 1975) which normally presents a factual issue to be resolved upon summary judgment or at trial. However, defendants also argue that because there was in their opinion probable cause for all of the arrests, the question of good faith is decided in their favor as a matter of law. See e.g., Hunter v. Clardy, 558 F.2d 290 (5th Cir. 1970); Rodriguez v. Jones, 473 F.2d 599 (5th Cir.), cert. denied, 412 U.S. 953 (1973). With respect to the arrests on June 21, 1975, it is unclear whether there ever was probable cause arising out of the "offenses" committed in the presence of the officers because the officers were the sole observers of the alleged "trespass" and because the "conviction" for possession of a firearm on a management area was based upon "probable cause" and an alleged reasonable belief that a non-existant crime had been committed. See Howell v. State of Georgia, supra. Likewise, because plaintiff's second arrest, based upon a warrant grounded solely upon Louis Raulerson's sworn statement, resulted in a "no bill", it is not entirely clear that probable cause for that arrest existed. Compare Bush v. State of Georgia, 123 Ga. App. 584, 181 S.E.2d 917 (1971) (valid conviction is conclusive of probable cause and therefore false imprisonment question).

Nothing in Hunter v. Clardy, supra dictates a contrary result. In that case, the Court of Appeals relied upon the district court's factual finding that an offense had in fact been committed in holding that no §1983 violation could be found. In this action, no such factual finding has been made. Therefore, we conclude that defendants presently have demonstrated no immunity which conclusively precludes plaintiff from bringing this action. Accordingly, defendant's motion to dismiss plaintiff's §1983 claims on the basis of lack of "state action" or official immunity is hereby DENIED.

Defendants have also argued that plaintiff's pendent state claims should not be entertained here because they preponderate over the federal claims. These state claims arise out of the same nucleus of operative facts which forms the basis of plaintiff's federal claims. United Mine Workers v. Gibbs, 383 U.S. 715 (1966). In addition, defendants conveniently ignore the important fact that most if not all §1983 actions are in fact differentiated from garden variety state tort actions not by the nature of the acts in question but rather by the question of whether those acts are committed "under color of state law." Moreover, if we do not entertain these pendent state claims a second action in state court involving almost identical facts and potentially giving rise to res judicata or collateral estoppel problems would be necessitated. We do not believe that the discretion vested by Gibbs sanctions such an uneconomical result. Accordingly, defendants' motion to dismiss plaintiff's pendent state claims is hereby DENIED.

STATUTE OF LIMITATIONS

It is well settled that under 42 U.S.C. §1983, where no federal limitations period is provided, the federal court applying federal law must borrow from state law the limitations period most nearly applicable. Bryant v. Potts,

528 F.2d 621 (5th Cir. 1976); Boshell v. Alabama Mental Health Board, 473 F.2d 1369 (5th Cir. 1973). In Georgia that statute is Ga. Code §3-1004/[3] which provides a two year limitations period for injuries to the person. In the instant action, there are substantial questions as to when the subject incidents in fact transpired. Because this question ultimately affects the subject matter jurisdiction of this court, the parties are hereby ORDERED to submit affidavits as to precisely when the alleged acts occurred; and if necessary, briefs directed to any possible tolling questions, within fifteen (15) days of the date of this order. Accordingly, defendants' motion to dismiss on the grounds of the statute of limitations is hereby DEFERRED pending the expiration of the foregoing period.

In sum, this court has today: (1) GRANTED defendants' motion to dismiss plaintiff's claims under 42 U.S.C. §1985(3); (2) GRANTED defendants' motion to dismiss the Georgia Department of Natural Resources from this action; (3) DENIED defendant Tanner's motion to dismiss; (4) DENIED defendants' motion to dismiss on the basis of a lack of action under "color of state law"; (5) DENIED defendants' motion to dismiss on the basis of official immunity; (6) DENIED defendants' motion to dismiss plaintiff's pendent state claims; and (7) ORDERED the parties to submit affidavits and, if necessary, briefs going to the statute of limitations question within fifteen (15) days of the date of this order and DEFERRED ruling on the question for that period of time.

IT IS SO ORDERED.

This, the 2nd day of May, 1978.

RICHARD C. FREEMAN
UNITED STATES DISTRICT JUDGE

FOOTNOTES

[1] The only defendant not presently joining in the motion to dismiss is the Langdale Company

[2] The Code section pursuant to which this regulation purportedly was enacted provided that:

> Any person or corporation who shall violate any of the rules or regulations promulgated by the commission shall be guilty of a misdemeanor and upon conviction shall be punished as provided by law.

Ga. Code §45-116.

[3] Ga. Code §3-1004 states that:

> Actions for injuries to the person shall be brought within two years after the right of action accures, except for injuries to the reputation, which shall be brought within one year, and except actions for injuries to the person involving loss of consortium shall be brought within four years after the right of action accrues: Provided however, no such action on which the statute has expired prior to the effective date of this section shall be revived by this section.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

March 1, 1982

APPENDIX B

J. E. B. Stewart, Esq.
194 S. Main Street
Jonesboro, Georgia 30236

RE: Louis Raulerson v. Van Howell (81-1210); Van Howell v. Joe D. Tanner, etc., et al. (81-6239)

Dear Mr. Stewart:

In reply to your letter of February 22, 1982, received March 1, 1982, you may file on behalf of Mr. Howell a response to the petition for a writ of certiorari in typewritten form prefaced by a motion for leave to proceed in forma pauperis as permitted by Rules 46 and 39 of the Rules of the Supreme Court.

Such a response must be received by this office on or before March 10, 1982 as indicated in Mr. Stevas's letter of February 8, 1982.

Very truly yours,

ALEXANDER L. STEVAS, Clerk

By Francis J. Lorson

Francis J. Lorson
Chief Deputy Clerk

rjb
cc: Mark A. Dickerson, Esq.
A. W. Touchton, Esq.
J. Laddie Boatwright, Esq.
E. Speer Mabry, Esq.
Ronald A. Lowry, Esq.
William Langdale, Jr., Esq.
Kelly Raylerson, Esq.

The Department of Law
State of Georgia
Atlanta

FILED IN CLERK'S OFFICE APPENDIX C
U.S.D.C. - Atlanta

ARTHUR K. BOLTON
ATTORNEY GENERAL

132 STATE JUDICIAL BUILDING
TELEPHONE 656-3300

JAN 11 1979

BEN H. CARTER, Clerk

January 9, 1978

FILED IN CLERK'S OFFICE

JAN 11 1979

BEN H. CARTER, Clerk
By: Deputy Clerk

Hon. Ben H. Carter, Clerk
United States District Court
U. S. Courthouse, Room 100
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Re: Howell v. Tanner, et al; Civil Action No. 78-02A, United States District Court for the Northern District of Georgia, Atlanta Division

Dear Mr. Carter:

I have attached herewith two copies for filing of the Exhibit referenced in Paragraphs 58 and 59 of Commissioner Tanner's Answers to Mr. Howell's Interrogatories which were filed with the Court on January 5, 1979. The materials comprising the Exhibit were inadvertently omitted from the file copy of the Answers to Interrogatories. Under separate cover, I forwarded on January 8, 1978, the material to Mr. J. E. B. Stewart, counsel for Mr. Howell.

If you have any questions or comments concerning the foregoing, please advise me.

Sincerely,

J. DAVID DYSON
Assistant Attorney General

JDD/uhs
Attachment

AGREEMENT

BETWEEN THE

STATE OF GEORGIA

DEPARTMENT OF NATURAL RESOURCES

-AND-

THE LANGDALE COMPANY AND THE ESTATE OF H. LANGDALE

CONCERNING

THE OPENING OF LAND TO

PUBLIC HUNTING AND WILDLIFE DEVELOPMENT

WHEREAS, there is a demonstrated interest and need for additional land areas for supervision by the State Game and Fish Division of the Department of Natural Resources of the State of Georgia, in order to increase and properly protect wildlife and to provide greater opportunity for the hunting of game animals; and

WHEREAS, the Langdale Company and the Estate of H. Langdale own certain lands favorable for game management areas and desire to take advantage of services offered by the Game and Fish Division of the Department of Natural Resources of the State of Georgia;

THEREFORE, this Agreement is made and entered into between The Langdale Company and the Estate of H. Langdale, hereinafter referred to as "OWNERS", and the State of Georgia, acting by and through its Department of Natural Resources, hereinafter referred to as the "DEPARTMENT", the parties hereto mutually covenant and agree as follows:

WITNESSETH:

1.

OWNERS do, upon and subject to the terms, conditions, and

limitations hereinafter contained, and in consideration of the sum of money set out in Paragraph 2 of this Agreement, hereby agree to and do give, transfer, and grant unto the DEPARTMENT the rights to introduce wildlife species, mutually agreed upon, for propagation purposes; to make habitat improvements for such wildlife; to take or allow to be taken wildlife in quantities consistent with the preservation, protection and propagation of such wildlife; and to organize, arrange, and carry out public managed hunts. All of these rights are to be exercised on lands of OWNERS described in Exhibit "A", hereto attached and made a part hereof.

2.

In consideration of the rights conferred upon the DEPARTMENT by OWNERS in Paragraph 1 of this Agreement, the DEPARTMENT hereby agrees to pay to OWNERS a sum of money equal to the fees collected by the DEPARTMENT during the one (1) year time period commencing with the date of signing of this Agreement by both parties in connection with any public hunts carried out by the DEPARTMENT on the property described in Exhibit "A".

3.

The parties hereto mutually agree that this Agreement shall become effective when signed by both parties hereto and shall continue in force for one (1) year from the date of signing by both parties. At the end of said one (1) year period, this Agreement may be renewed by mutual agreement of both parties, said agreement to be signified by re-signing and re-dating this Agreement. Should this Agreement not be renewed at the end of one (1) year, it shall become null and void.

4.

The Department of Natural Resources biologists, wildlife

rangers, and other employees of the DEPARTMENT shall have the right to enter and go upon said lands for all purposes necessary to the full enjoyment by the DEPARTMENT of the rights herein granted to it and OWNERS do hereby give unto the DEPARTMENT full and free ingress and egress to, over, and from said lands for said purposes at all times during the term of this Agreement; provided, however, that the DEPARTMENT agrees to use due care in the exercise of said ingress and egress to, over, and from said lands so as not to cause undue damage to crops, livestock, buildings and property of a like nature, normal wear and tear excepted.

5.

The DEPARTMENT shall, through its agents and employees, cooperate to prevent unauthorized grazing, timber cutting, burning and general trespass on said lands and will promptly report to the person designated in Paragraph 14 all known unauthorized grazing, cutting, burning, and general trespass.

6.

The DEPARTMENT agrees to assign at least one (1) wildlife ranger or employee to the development and protection of the area described in Exhibit "A". Any ranger or employee so assigned shall as a part of his duties participate on behalf of the DEPARTMENT in any fire control system or program established to control fires on the area. It is expressly agreed and understood that fire control is essential to the protection and propagation of wildlife on the area and that the DEPARTMENT will utilize every available, authorized means to aid and assist in such program.

7.

The DEPARTMENT, in exercising the rights set out in Paragraph 1 of this Agreement, may permit game to be taken from the lands

described in Exhibit "A" in reasonable quantities consistent with the preservation, protection and propagation thereof and with the game management contemplated by the parties hereto. Such hunting shall be under such rules and regulations as the DEPARTMENT may at that time have in force, and, when so permitted and authorized by the DEPARTMENT, persons holding licenses or exempt under law, may enter and leave said lands at such place or places as may be determined and provided by mutual agreement between the parties hereto. It is understood that such hunting shall be available to the general public and not restricted to any group or club.

8.

The parties mutually agree that where hunting permits are issued on specified managed hunts, OWNERS shall submit to the DEPARTMENT a list of designated personnel who shall then receive a permit free of charge, which permit shall be nontransferable. It is further agreed that said list shall not exceed fifty (50) individuals, and that submission of said list shall be at least ten (10) days prior to said managed hunts.

9.

The rights and privileges herein granted the DEPARTMENT shall be so exercised and so enjoyed and its operations on said lands so conducted as not to interfere in any way with any use, other than hunting, which OWNERS, from time to time, wish to make of said lands and its other properties, or any operations, other than hunting, which OWNERS, from time to time, may wish to conduct thereon.

10.

A. The parties hereto shall agree for the development, planting and growing of game food and cover by the DEPARTMENT at designated areas and the benefits flowing to each party hereto

shall be deemed sufficient and adequate for the use of the areas devoted to and utilized for such purposes.

B. The parties shall mutually agree on the specific areas to be devoted to and utilized for game food and cover and in so doing shall take into consideration the interests of both parties and they shall adapt and utilize such areas as to accomplish the maximum game food and cover, while at the same time resulting in the minimum damage to property.

C. The DEPARTMENT agrees to develop areas on said lands for wildlife, without expense to OWNERS, and in accordance with work plans approved by the parties hereto; and that in such permissive use of said land, no timber of any kind or size on said lands will be damaged or destroyed, except as may be authorized by OWNERS.

11.

The DEPARTMENT agrees to furnish and erect signs on the boundaries of said lands which are clearly marked or designated, indicating such lands are under the wildlife management of the DEPARTMENT.

12.

It is understood that the area described in Exhibit "A" may be closed to hunting when it is mutually agreed and commonly understood that severe fire hazard conditions exist. Such closure shall be made by the DEPARTMENT at the request of OWNERS. It is further understood that in any case when such closure is made, the situation shall be mutually reviewed every three (3) days in order that the area might be reopened as soon as practical. It is also agreed that a number of days equal to that lost to hunting by reason of closure for high fire hazard conditions may be added to the end of the management area hunting season for those game species on

which an open season still exists in the surrounding counties.

13.

The parties hereto mutually agree that, except as otherwise herein provided, no publicity shall be given by either party as to the use of said lands with respect to wildlife unless agreed upon by the parties hereto.

14.

All notices to be given to OWNERS shall be addressed to THE LANGDALE COMPANY, ATTENTION:MR. JOHN J. LANGDALE, P.O.BOX 1088 at VALDOSTA, GEORGIA 31601 whose telephone number is 242-7450, or to such other person and address as OWNERS may, from time to time, furnish the DEPARTMENT, and all notices to be given the DEPARTMENT shall be addressed to the Game and Fish Division of the Department of Natural Resources of the State of Georgia, Atlanta, Georgia, or to such other address as may, from time to time, be furnished OWNERS by the DEPARTMENT.

15.

This Agreement is executed in two counterparts, each of which shall for all purposes be considered and deemed to be an original.

16.

It is expressly understood and agreed upon by the parties hereto that the DEPARTMENT may construct, equip and maintain structures on said lands for the furtherance of the purposes envisioned by the parties to this Agreement so long as the construction, equipment and maintenance of such structures are not violative of or in contravention of Georgia law; provided, however, that the approval of OWNERS is obtained by the DEPARTMENT as to the standards for the structures and the sites upon which they are to be located.

OWNERS agree that their approval will not be arbitrarily withheld.

17.

The parties mutually agree that upon the termination of this Agreement, said DEPARTMENT shall have the right to remove, within a reasonable time, any and all structures, equipment, apparatus and material supplied by it for the purpose of this Agreement.

18.

The parties hereto agree that hunt plans should be submitted to the person listed in Paragraph 14 in advance of their effective dates for OWNERS' information and knowledge; provided, however, that nothing herein shall be construed as taking from the DEPARTMENT the exclusive right of setting and enforcing the rules and regulations regarding the hunt plans.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in these names and on their behalf by themselves and their respective officers thereunto duly authorized

This First day of July, 1973.

ATTEST:

Wynne Carmichael

Lillian M. Small

THE LANGDALE COMPANY

By John W. Langdale

Title President

ATTEST:

Wynne Carmichael

Lillian M. Small

ESTATE OF H. LANGDALE

By Hollis Langdale Jr.
Co-Executor

By John W. Langdale
Co-Executor

OWNERS

ATTEST:

STATE OF GEORGIA
acting by and through its
DEPARTMENT OF NATURAL RESOURCES

By Joe D. Tanner

Title Commissioner

DEPARTMENT

336

PURSUANT TO PARAGRAPH 3 OF THIS AGREEMENT:

RENEWED THIS First DAY OF July, 1974.

ATTEST:

THE LANGDALE COMPANY

Edward M. Parrish

By Edward D. Langdale

Notary Public, Lowndes County, Ga.
My Commission Expires July 24, 1978

Title President

ATTEST:

ESTATE OF H. LANGDALE

Edward M. Parrish

By

Co-Executor

Notary Public, Lowndes County, Ga.
My Commission Expires July 24, 1978

By

Co-Executor

OWNERS

ATTEST:

STATE OF GEORGIA
acting by and through its
DEPARTMENT OF NATURAL RESOURCES

By

Title

DEPARTMENT

PURSUANT TO PARAGRAPH 3 OF THIS AGREEMENT:

RENEWED THIS 1st DAY OF July, 1975.

ATTEST:

THE LANGDALE COMPANY

By

Title

EXHIBIT "A"

All that tract or parcel of land lying and being in Echols and Clinch Counties, Georgia, consisting of 24,000 acres, more or less, being all that land owned by Lessors within the following described boundaries: On the north by U. S. Highway No. 84, on the west by U. S. Highway No. 129, on the south by Georgia Highway No. 187, and on the east by Suwanoochee Creek, with the exception of land lots 289, 430 and 428 in the 12th land district of Clinch County, Georgia and land lot 517 in the 11th land district of Lanier County, Georgia.